

EXHIBIT 18

Richstone, Mallory (APL)

From: Mahler, Jing (APL)
Sent: Wednesday, September 05, 2007 9:42 AM
To: Richstone, Mallory (APL)
Subject: Teamwork Calendars

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

jmahler@taylorcorp.com



From: Mahler, Jing (APL)
Sent: Friday, December 15, 2006 3:33 PM
To: 'Jake Jan'
Cc: Terenzetti, Michael; Kenny-APL; Shialyne-APL; Eileen-Tonzex
Subject: RE: Teamwork calendar

Dear Jake,

Thank you so much for your support for APL on the new products! You are the greatest!. I also have good news to you. I will start ordering process for the Teamwork Climbing hardcover with pen next Monday.

As far as the Team work soft cover go, would you please let me know how much the quote will be without stitching without spine? How about with stitching without Spine? We are trying to decide where should we go with this item, we will review this after we receive your quote. We are going to go forward with this item for sure, we just need to finalize the dimensions.

Thank you!

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

jmahler@taylorcorp.com

From: Jake Jan [mailto:jake@tonzex.com.cn]
Sent: Tuesday, November 28, 2006 9:24 AM
To: Mahler, Jing (APL)
Cc: Terenzetti, Michael; Kenny-APL; Shialyne-APL; Eileen-Tonzex
Subject: Re: Teamwork calendar

Dear Jing,

1. To APL, I'm hardly to quote you MOQ. We'll try whatever we can to meet your needs, except we can't absorb too much material stock! Therefore, I will accept most of your q'ty without any reason.
2. I leave the sample you gave (your competitor's sample in TPE office, but its vinyl was too rough and we reject it remember) and I don't suggest that.
3. For the Teamwork softcover (deboss vinyl size) that I discuss with Vincent and we willing to cut the cost to support your this project from \$0.295 to \$0.265.
4. For the Teamwork hard cover (Like Richford Duet) same we cut the cost to support you for this item from \$0.305 to \$0.29. In this item that was really have no any profits which because as I mention before we quote Richford vinyl was really low and also the Richford Duet too! Therefore, we did not have profit on this item whatever the q'ty are.
5. If we use PVC vinyl not like Richford vinyl, that cost will be a little cheaper. But the touch feel quality will be different because I knew that you don't want anything that feel cheap-like!

Hope that you could considerate that we was do our best to support those items to APL for introduce to the market. And I'm exciting to see your new design for next year.

Please if have any questions, I'm open to talk in any time! Thank you!

Best Rgds,

Jake

在 2006/11/28 上午 5:52 時 , Mahler, Jing (APL) 寫到 :

Dear Jake,

Another question for you for the Teamwork calendar, how many the MOQ would be if we order the Climbing hardcover Teamwork pen calendar?

Thank you!

Mahler

New Product Coordinator

Fax: 518-843-7505

jmahler@taylorcorp.com

From: Mahler, Jing (APL)

9/6/2007

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D000051

Sent: Friday, November 24, 2006 3:09 PM
To: Tonzex -Jake
Cc: Kenny-APL; Shialyne-APL; Eileen-Tonzex; Terenzetti, Michael
Subject: Teamwork calendar

Dear Jake,

We did some marketing analysis for the Teamwork calendar. We feel the price is too high for us to market this product. We need your help to see what we can do to lower the cost?

1. Do you still have the calendars we sent to you in the beginning (which is one of our competitor's calendars with mountain climbing? If you do, would you please quote that exactly calendar to us? If you can give us a detailed quote (how much for the material, how much for the paint, how much for the labor, etc.) that would be great. This is for us to figure out our marketing strategy.
2. For the teamwork calendar we are working on, can you also give us a detailed quote (how much for the material, how much for the paint, how much for the labor, etc.)?
3. In your previous e-mail, you stated that one of the reason this teamwork calendar we are working on is because of the material (not enough volume to get low cost from vinyl manufacturer), can you give us some options on vinyl? And how much the calendar would be with different vinyls?
4. Silkscreen is another big cost, is it possible that we can do something to reduce the cost? Would you please give us some options on this process?

Both APL and Tonzex work hard and long time for this calendar, we both want this calendar come to market, we need your help to introduce this product to market this year or early next year. Please help us with above questions and please don't hesitate if you have any questions and concerns.

Thanks for the new color swatches and new vinyl swatches. We will use some of them in the new calendars for next year. Next Monday we will send you some new designs for a new calendar for next year. A few of the designs we have here are very much attractive. Just wait and see.

Thank you!

Mahler

New Product Coordinator

Fax: 518-843-7505

mahler@taylorcorp.com

EXHIBIT 19

Richstone, Mallory (APL)

From: Mahler, Jing (APL)
Sent: Wednesday, September 05, 2007 9:47 AM
To: Richstone, Mallory (APL)
Subject: Teamwork Calendars

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

jmahler@taylorcorp.com

From: Mahler, Jing (APL)
Sent: Thursday, June 22, 2006 2:29 PM
To: 'Jake Jan'
Cc: eileen; Kenny-APL; shialyne@mail2000.com.tw; Terenzetti, Michael
Subject: Teamwork calendars

Dear Jake,

Here is the artwork for the Teamwork calendar.

Would you please do this in two versions: one is in Richford vinyl, one is in World map vinyl.

Thank you!

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

jmahler@taylorcorp.com



9/6/2007

From: Jake Jan [mailto:jake@tonzex.com.cn]
Sent: Thursday, June 22, 2006 9:37 AM
To: Mahler, Jing (APL)
Cc: eileen; Kenny-APL; shialyne@mail2000.com.tw; Terenzetti, Michael
Subject: Re: Debossed calendars

Dear Jing,

The Richford notepad PO scheduled 7/15 x 80,000 pcs & 7/29 x 130,000 pcs. That vinyl was no problem but the calculator need to wait components of LCD panel, so our best delivery will be as:

7/20 x 80,000 pcs.

8/3 x 130,000 pcs.

All will be one week behind your original schedule(and that was very short for our Electronic items), please understand that was our best.

This is I just confirm with vendor and our production manager after shipping schedule meeting. Eileen will issue PI to Barry within these two days.

Thank you & Best Rgds,

Jake

在 2006/6/22 上午 4:34 時 , Mahler, Jing (APL) 寫到 :

Dear Jake,

Would you please let me know your ship date for the Richford Notepad under PO 83215?

Thank you!

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

9/6/2007

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D000106

jmahler@taylorcorp.com

From: Jake Jan [<mailto:jake@tonzex.com.cn>]
Sent: Tuesday, June 20, 2006 10:59 PM
To: Mahler, Jing (APL)
Cc: eileen; Kenny-APL; shialyne@mail2000.com.tw; Terenzetti, Michael
Subject: Re: Debossed calendars

Dear Jing,

Yes, it was right in the middle on the cover and the height. Thought that just angle effect!

Don't worry I will make sure the quality and make no mistake.

Best Rgds,

Jake

在 2006/6/21 上午 5:53 時 , Mahler, Jing (APL) 寫到 :

Dear Jake,

Thank you for the photo, do you think the chiro man is in the middle of the calendar, from the picture, it seems a little to the right, maybe just the angle of the picture. Would you please help me to double check the position, as long as the chiro man is in the middle of the front cover (from left to right), then it is approved.

Regards!

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

jmahler@taylorcorp.com

From: Jake Jan [<mailto:jake@tonzex.com.cn>]
Sent: Monday, June 19, 2006 9:59 PM
To: Mahler, Jing (APL)

9/6/2007

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D000107

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Cc: eileen; Kenny-APL; shialyne@mail2000.com.tw; Terenzetti, Michael
Subject: Re: Debossed calendars

Dear Jing,

The Chiro move to the center(3mm to the right) and "Made in China" move to the back cover (3 mm to the left), have been changed and please see attached photo(one overview, one close view) for your confirmation. (This item's PO not yet placed)

Also awaiting for your Eagle artwork soon.

Best Rgds,

Jake

在 2006/6/15 下午 10:58 時 , Mahler, Jing (APL) 寫到 :

Dear Jake,

I have 50% good news, 50% bad news.

The Chiro artwork is approved, but please move the design to the center of the calendar (3mm to the right). You don't need to change the height of the artwork. Another thing is the location of "Made in China", please move it to the about 3mm to the left so it will be on the back cover of the calendar, (the sample we received "made in China is in front cover.)

If you can just send me a picture with the artwork and "Made in China" in the right location. We can approve that. I know you need to start to produce right away.

I will send you the Chiro order soon.

The Eagle is not approved, we still think the artwork is not detail enough. Our designer is working on revising the design. I will try to send to you today to make another round of samples.

Thank you so much for your help!

Jing Mahler

New Product Coordinator

Amsterdam Printing & Litho

Tel: 518-842-6000, ext 2889

Fax: 518-843-7505

jmahler@taylorcorp.com

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D000108

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<APL1.jpg>

<APL3.jpg>

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9/6/2007

D000109

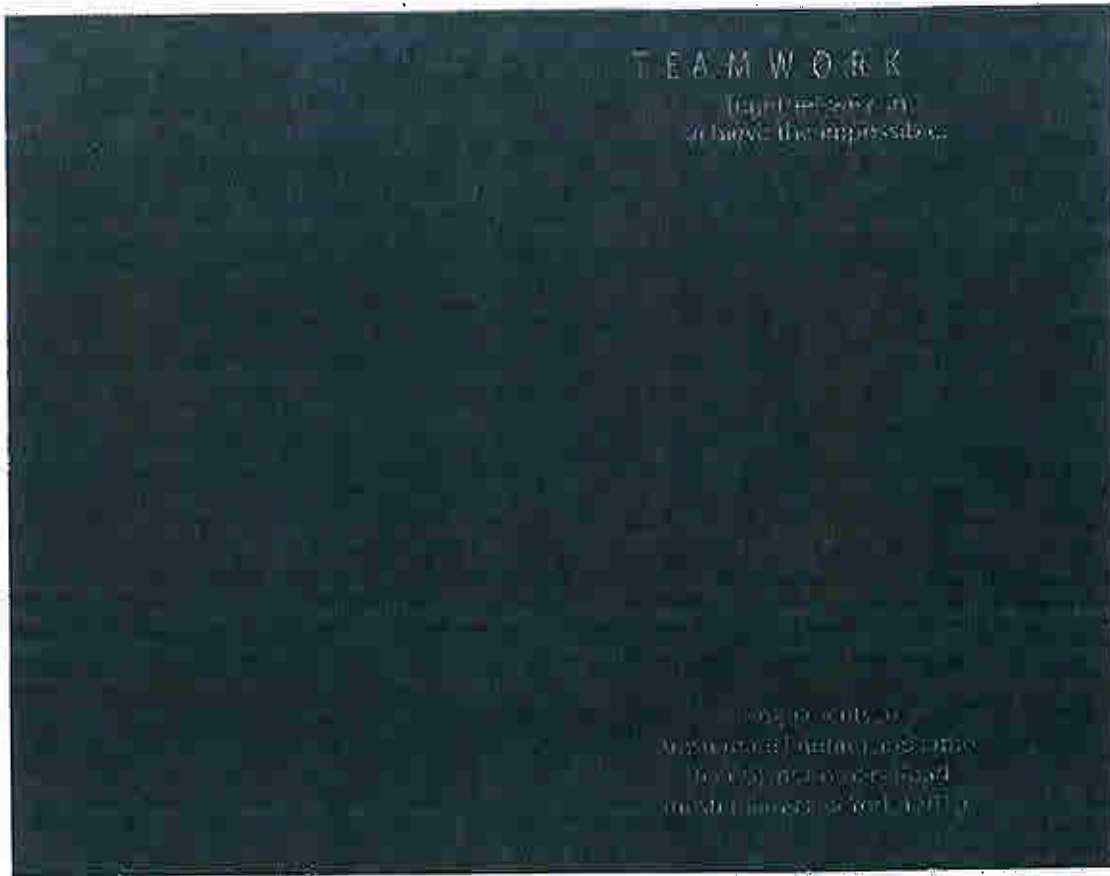



EXHIBIT 20

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United Teamwork Pin. Duet Monthly



United Teamwork Pin. Duet Weekly

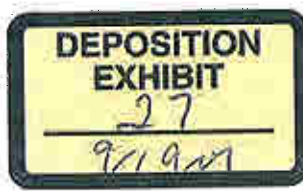


Stoneware Cld Mugw/Teamwork Slogan



Item Color: Blue Imprint Color: Gold Imprint Area: 1 3/4" w x 2" h, up to 5 lines ...

Item Color: Blue Imprint Color: Gold Imprint Area: 2 7/8" w x 1 1/4" h, up to 5 lines ...




A great mug to motivate and encourage! Richly colored with striking gold imprint - this 11 oz. mug is perfect for employees and business partners. Lead your team to success! ...


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Aristocrat Pen W/Teamwork Slogan



Pin-Teamwork



The Aristocrat Pen features retractable ball point with plastic cap and barrel, accented in gold. With the addition of the Teamwork slogan on the cap, this pen is ideal for employee and business associate gifts. Item Color: Forest Green Ink Color: Black Imprint Color: Gold No Custom Imprint Available ...

Promote your companies' emphasis on teamwork with these beautiful motivational pins. Great for offices or schools! ...

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United Teamwork Pocket Cal. Monthly



Item Color: Blue Imprint Color: Gold Imprint Area: 2 7/8" w x 1 1/4" h, up to 5 lines ...

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Monthly

Item Color: Blue Imprint Color: Gold Imprint Area: 2 7/8" w x 1 1/4" h, up to 5 lines ...

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Weekly

Item Color: Blue Imprint Color: Gold Imprint Area: 2 7/8" w x 1 1/4" h, up to 5 lines ...

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Item Color: Blue imprint Color: Gold Imprint Area: 1 3/4" w x 2" h, up to 5 lines ...

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Item Color: Blue Imprint Color: Gold Imprint Area: 1 3/4" w x 2" h, up to 5 lines ...

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1 |

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Achieve Teamwork Pocket Cal.Monthly




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Item Number: 30840

Item Color: Blue
Imprint Color: Gold
Imprint Area: 2 7/8" w x 1 1/4" h, up to 5 lines

Qty	50	100	250	500	1,000	2,500
Price	\$2.99	\$2.89	\$2.79	\$2.59	\$2.49	\$2.49
Total	\$149.50	\$289.00	\$697.50	\$1,295.00	\$2,490.00	\$6,225.00


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Anniversary Products


- Anniversary Pens
- Anniversary Apparel
- Anniversary Calendars

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--- Make a Selection ---

HOME > Achieve Teamwork Pocket Cal.Weekly

Achieve Teamwork Pocket Cal.Weekly




Item Number: 30839

Item Color: Blue
 Imprint Color: Gold
 Imprint Area: 2 7/8" w x 1 1/4" h, up to 5 lines

Qty	50	100	250	500	1,000	2,500
Price	\$3.19	\$3.09	\$2.99	\$2.79	\$2.69	\$2.59
Total	\$159.50	\$309.00	\$747.50	\$1,395.00	\$2,690.00	\$6,475.00


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Achieve Teamwork Duet Monthly



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Item Number: 30834

Item Color: Blue
Imprint Color: Gold
Imprint Area: 1 3/4" w x 2" h, up to 5 lines

Qty	50	100	250	500	1,000	2,500
Price	\$3.29	\$3.19	\$3.09	\$2.89	\$2.79	\$2.69
Total	\$164.50	\$319.00	\$772.50	\$1,445.00	\$2,790.00	\$6,725.00

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Quick Links

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HOME > Achieve Teamwork Duet Weekly

Achieve Teamwork Duet Weekly




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Item Number: 30833

Item Color: Blue
Imprint Color: Gold
Imprint Area: 1 3/4" w x 2" h, up to 5 lines

Qty	50	100	250	500	1,000	2,500
Price	\$3.49	\$3.39	\$3.29	\$3.09	\$2.99	\$2.89
Total	\$174.50	\$339.00	\$822.50	\$1,545.00	\$2,990.00	\$7,225.00


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Uptown Two-Tone Tote-Embroidered



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EXHIBIT

21

Kevin Kirbey

9/19/2007

Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 MYRON CORP.,

6 Plaintiff,

7 vs.

8 HOLLAND USA, INC. D/B/A/
9 AMSTERDAM PRINTING

10 Defendant.
11 -----X

12 September 19, 2007

13 1:30 p.m.
14
15

16 Deposition of KEVIN KIRBEY, held at
17 the offices of Colucci & Umans, 218 East
18 50th Street, New York, New York before
19 David Henry, a Certified Shorthand Reporter
20 and Notary Public of the State of New York.
21
22
23
24
25

Jacobson Decl., Ex. 21
Page 1 of 7

Kevin Kirbey

9/19/2007

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Page 16

1 Kirbey
 2 A. Correct, or dental.
 3 Q. Now, does Union Pen sell the same
 4 products that Amsterdam sells?
 5 A. It sells a smaller subset of
 6 them.
 7 Q. Who do you consider competitors
 8 of the Holland businesses?
 9 A. National Pen, 4 Imprint, Myron.
 10 Many distributors, because they sell to
 11 end-users, and a laundry list of other
 12 players.
 13 Q. So Myron is a competitor,
 14 National Pen is a competitor?
 15 A. Yes.
 16 Q. And you say some distributors are
 17 competitors?
 18 A. By their nature they sell to
 19 consumers, as does Holland.
 20 Q. But I thought you explained
 21 before that distributors sell to --
 22 A. Consumers.
 23 Q. Other companies who then in turn
 24 sell to consumers?
 25 A. No, in the context of our

1 Kirbey
 2 Q. So it's a year long project for
 3 your company?
 4 A. Pretty much.
 5 Q. And is the bulk of your business
 6 through repeat orders from existing
 7 customers?
 8 A. How do you define bulk?
 9 Q. Let's say more than 50 percent.
 10 A. Yes.
 11 Q. Is it more than two thirds?
 12 A. Probably. Anything more than
 13 that I wouldn't be comfortable. It also
 14 varies from year to year.
 15 Q. Can you explain for us the
 16 relationship of Banyan in relationship to
 17 Taylor, Holland and Amsterdam?
 18 A. Taylor owns Banyan, Banyan owns
 19 Holland.
 20 Q. So there is an intermediary?
 21 A. An intermediary that was
 22 introduced about a year ago, maybe a year
 23 and a half ago.
 24 Q. Does Banyan operate any company
 25 under its name?

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Page 17

1 Kirbey
 2 conversation, consumers was a term I used
 3 as the small and medium size business, the
 4 people that would be giving them out, which
 5 is exactly what a distributor does as well.
 6 Q. Do distributors also sell to
 7 smaller versions of Amsterdam and Union
 8 Pen?
 9 A. Not normally. They could, but by
 10 nature they wouldn't.
 11 Q. How frequently do the Holland
 12 companies come out with new calendar
 13 designs?
 14 A. Multiple times throughout the
 15 year.
 16 Q. So each year will bring new
 17 designs?
 18 A. Correct.
 19 Q. And you will introduce them at
 20 various points throughout the year as well?
 21 A. Correct.
 22 Q. What is the selling season for
 23 calendars?
 24 A. Starts January 1, ends December
 25 31.

1 Kirbey
 2 A. No.
 3 Q. Meaning any company that sells
 4 products.
 5 A. Well, it owns Holland, so by
 6 default it would have to, is that what you
 7 are referring to?
 8 Q. No, I mean so Banyan --
 9 A. Does Banyan go to market under
 10 its own brand name?
 11 Q. Exactly.
 12 A. No.
 13 Q. So you said that you introduced
 14 new designs throughout the year and every
 15 year, typically every season as well. Do
 16 you also have perennial calendar designs
 17 for pocket calendars that have been run
 18 continuously for more than let's say five
 19 years?
 20 A. A very small number. Most of the
 21 designs, even if they're offered all year,
 22 will have some cosmetic change.
 23 Q. Other than the imprinting of the
 24 customer and the calendar year. And do you
 25 find customers who want the same design

5 (Pages 14 to 17)

Kevin Kirby

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<p>1 Kirby</p> <p>2 Q. When you say it was bundled, were</p> <p>3 they --</p> <p>4 A. They were just put in the same</p> <p>5 envelope.</p> <p>6 Q. When were the first sales</p> <p>7 generated by defendants of any calendars</p> <p>8 that featured teamwork?</p> <p>9 A. I don't know for sure. I know we</p> <p>10 had activity in May. I haven't been</p> <p>11 able -- I don't have the date in front of</p> <p>12 me to know how much was between May and</p> <p>13 June.</p> <p>14 Q. So you're saying there was some</p> <p>15 activity between January and May?</p> <p>16 A. I'm told so, I haven't seen the</p> <p>17 numbers to verify exactly how much, and</p> <p>18 that it's accurate.</p> <p>19 Q. How many calendars exist that</p> <p>20 feature of the word teamwork and the</p> <p>21 slogan, together we can achieve the</p> <p>22 impossible?</p> <p>23 MR. AIETA: Objection.</p> <p>24 A. How many exist that Holland owns?</p> <p>25 Q. Yes.</p>	<p>1 Kirby</p> <p>2 compete with Myron and we need to sell a</p> <p>3 calendar with a pen in it. So we started</p> <p>4 down the path of a calendar-pen design and</p> <p>5 then tried to figure out where else we</p> <p>6 could sell it, and it morphed into we</p> <p>7 thought it was a better fit in motivational</p> <p>8 type products and we thought we could</p> <p>9 compete with a better product with Myron,</p> <p>10 so we thought we would just have to develop</p> <p>11 it.</p> <p>12 Q. So this teamwork calendar was a</p> <p>13 direct result of your intention to compete</p> <p>14 with Myron?</p> <p>15 A. It was a combination of that and</p> <p>16 augmenting an existing motivation.</p> <p>17 Q. Because you also sell teamwork</p> <p>18 calendars without pens?</p> <p>19 A. Correct, and we sell some more</p> <p>20 four-color ones as well.</p> <p>21 Q. And there is no compulsion to add</p> <p>22 a pen sleeve to a calendar and bundle it</p> <p>23 with the word teamwork, is there?</p> <p>24 MR. AIETA: Objection.</p> <p>25 A. I'm not sure that I understand</p>
Page 27	Page 29
<p>1 Kirby</p> <p>2 A. The part I'm not clear on would</p> <p>3 be would you consider with the pen and</p> <p>4 without the pen two separate calendars?</p> <p>5 Q. Well, you consider them separate</p> <p>6 SKU's, don't you?</p> <p>7 A. Correct.</p> <p>8 Q. And you price them differently,</p> <p>9 don't you?</p> <p>10 A. Correct. I'm just saying in the</p> <p>11 context of your question. I believe four.</p> <p>12 Q. Before you introduced the design</p> <p>13 that's Exhibit 15 with the flying geese,</p> <p>14 did you do any testing?</p> <p>15 A. No.</p> <p>16 Q. What was the inspiration for the</p> <p>17 flying geese design?</p> <p>18 A. The inspiration, you mean how the</p> <p>19 product began? Can you clarify a little</p> <p>20 bit?</p> <p>21 Q. What was the development of the</p> <p>22 design that culminated in this calendar?</p> <p>23 A. Okay, it started over two years</p> <p>24 ago with the gentleman I report into,</p> <p>25 pushing us to say we need to be able to</p>	<p>1 Kirby</p> <p>2 the question.</p> <p>3 Q. The fact that you wanted to</p> <p>4 compete with Myron by selling calendars</p> <p>5 with pens and a pen sleeve with it didn't</p> <p>6 require you to use the word teamwork, did</p> <p>7 it?</p> <p>8 A. No.</p> <p>9 Q. And it didn't require you to use</p> <p>10 the phrase, together we can achieve the</p> <p>11 impossible, did it?</p> <p>12 A. No.</p> <p>13 Q. And there was no requirement that</p> <p>14 you needed to use a mountain scene, did it?</p> <p>15 A. No.</p> <p>16 Q. So for either design that the</p> <p>17 defendants are using with the word teamwork</p> <p>18 on it, the goose design and the mountain</p> <p>19 climber, was any product testing or market</p> <p>20 study done before?</p> <p>21 A. We've sold mountain climbers</p> <p>22 before under the motivational series in</p> <p>23 four-color, did okay, figured if it worked</p> <p>24 for Myron and it worked for us, we could go</p> <p>25 ahead and -- traditionally we don't test</p>

8 (Pages 26 to 29)

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1 Kirbey
2 that aggressively with the product.
3 Q. Is that same mountain climber
4 design in Exhibit 15 that you've used in
5 the past?
6 A. That's a good question. Yes.
7 Q. So you're pointing to the
8 calendar on page 16 of Exhibit 15 in the
9 second row, last item, headline
10 determination.
11 A. Correct.
12 Q. Do these calendars on page 16
13 represent all of your motivational
14 calendars?
15 A. I believe there is a few more.
16 They're not great sellers, so they're not
17 in all the books. There is other product
18 we sell that doesn't make the catalogue.
19 Q. The determination calendar only
20 has one mountain climber, am I correct?
21 A. I believe so.
22 Q. Can you describe for us the
23 evolution of the teamwork calendars and
24 their design, how they were created, by
25 whom, and the time frame?

1 Kirbey
2 Q. Who was the designer?
3 A. The designer's name is Joe
4 Achzet.
5 Q. And is he based in Amsterdam?
6 A. Yes. So he was the individual
7 who actually designed the product,
8 including the pen sleeve, and from there it
9 was turned over to our marketing team to
10 figure out what was the best niche to sell
11 it.
12 Q. And do you know what materials he
13 referred to in creating the design?
14 A. We had initially just
15 conversation and he had an actual sample of
16 the Myron calendar and he had a sample of
17 some products, motivational products and
18 the third was a sample of our four color --
19 the one I referred to on page 16.
20 Q. The determination calendar?
21 A. Yes.
22 Q. Do you know which Myron calendar
23 he had?
24 A. No.
25 Q. It was one with a pen sleeve?

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1 Kirbey
2 A. Back in -- the conversation
3 started as early as 2005 with the idea that
4 we needed to bundle a pen and a calendar
5 together, so initial designs were done that
6 way. The product -- there was a lot of
7 conversation between my boss and our
8 product development team. The person I
9 reported to is Paul Griffiths. He was
10 pushing our design team to create something
11 with a pen and a calendar, because we sell
12 pens and calendars and it seemed like we
13 should be doing it. So that started the
14 early part of 05. Over the course of time
15 we developed a couple of products that
16 looked okay. The next phase of that was to
17 say if the pen and calendar works for our
18 competitors we should try and build
19 something better than theirs and sell it.
20 So we took what we thought was a higher
21 end, better product, which is this
22 calendar, the stitch calendar here, and had
23 our designer come up with some designs of
24 motivational and decided to go to work with
25 it.

1 Kirbey
2 A. Yes.
3 Q. And it was a pocket calendar?
4 A. Yes.
5 Q. And did it have -- did it look
6 similar to the one I'm showing you now with
7 the word teamwork on it?
8 A. I think so, but I'm not sure
9 because I asked him.
10 Q. Do you know whether Joe, is that
11 his name, Joe still has that sample?
12 A. To the best of my knowledge, no.
13 Q. Do you know what happened to it?
14 A. No.
15 Q. Do you know whether any samples
16 were sent to your manufacturer to help
17 fabricate samples for you to test?
18 A. I know there was correspondence
19 that said could we do a fabrication test on
20 a sample calendar with a pen sleeve. I
21 believe they were sent. I haven't been
22 able to confirm it. There is e-mail
23 correspondence showing that. I've talked
24 to the manufacturer. But I believe it's in
25 the e-mail correspondence.

9 (Pages 30 to 33)

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1 Kirby
 2 received a sample mailing, I can't be
 3 exactly sure which one.
 4 Q. And that was the first time you
 5 had ever seen Myron's teamwork calendar in
 6 person?
 7 A. Correct.
 8 Q. Had you ever seen it in a
 9 catalogue?
 10 A. No.
 11 Q. Had you seen it on a website?
 12 A. I had seen it on their website
 13 probably a year prior.
 14 Q. And why were you looking there?
 15 A. I look at all the products of the
 16 industries that we're in, of our
 17 competitors.
 18 Q. So you knew at least as of 2005
 19 that Myron had a calendar that featured the
 20 word teamwork, the trademark, together we
 21 achieve the extraordinary, and a scene of
 22 two mountain climbers?
 23 MR. AIETA: Objection. Go
 24 ahead.
 25 A. I was aware that there was a

1 Kirby
 2 MR. AIETA: Object to the form.
 3 A. No. Just one mountain climber,
 4 not two.
 5 Q. Now, turning to page 15, page 16
 6 rather of Exhibit 15, did you ever give any
 7 thought to using any of the motivational
 8 phrases that appear on the six calendars
 9 listed there for the teamwork calendar?
 10 A. I wasn't a part of the selection
 11 of the verse. Our marketing team looked at
 12 it and made the determination to go with
 13 teamwork.
 14 Q. Well, teamwork -- right, but I'm
 15 talking about the verse. Who was involved
 16 in the selection of the verse?
 17 A. Margaret Enzien.
 18 Q. And do you know what
 19 considerations she used or referred to in
 20 selecting the verse?
 21 A. The best I can tell is she didn't
 22 like determination, thought she liked
 23 teamwork and thought she could do it better
 24 than anybody else. So she thought with
 25 that verse on her product, teamwork is

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1 Kirby
 2 calendar with a pen and that there was a
 3 picture of a mountain climber. The first I
 4 can tell you I was aware of the motivation
 5 phrase teamwork would have been when I got
 6 the physical sample last year.
 7 Q. And why is that?
 8 A. Why did I get the sample?
 9 Q. No, why were you not aware of the
 10 use of teamwork on the calendar with the
 11 pen?
 12 A. At the time when I looked at the
 13 product I was more focused on the physical
 14 elements of it, and couldn't produce a
 15 calendar with a pen in it.
 16 Q. But the first time you saw it, it
 17 was on the website?
 18 A. I do not even remember looking at
 19 the imprint nor could I even have told you
 20 what the imprint was until I got the
 21 sample. I can tell you it had a pen and a
 22 calendar.
 23 Q. Are you aware of anybody else who
 24 does a pocket calendar with a similar
 25 mountain, scene of two mountain climbers?

1 Kirby
 2 something, she came from our HR business
 3 and has worked in motivational before,
 4 thought it was a better fit for the market.
 5 Q. So she wanted to use teamwork on
 6 the calendar, and you're saying she didn't
 7 care for any of the existing verses that
 8 would fall beneath any of the thematic
 9 elements on motivational calendars?
 10 A. Correct.
 11 Q. And do you know what materials
 12 she referred to in coming up with the
 13 verse?
 14 A. No.
 15 Q. Do you know whether she like Joe
 16 in your design apartment had Myron's
 17 calendar in front of her when she came up
 18 with the verse?
 19 MR. AIETA: Objection.
 20 A. I know she was aware of it. I do
 21 not know if at the time she had it in front
 22 of her.
 23 Q. But she was aware of Myron's
 24 teamwork calendar?
 25 A. Correct.

11 (Pages 38 to 41)

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<p style="text-align: right;">Page 42</p> <p>1 Kirbey</p> <p>2 Q. Now, on your website, when you</p> <p>3 look for motivational products, in addition</p> <p>4 to the six items listed on page 16 of</p> <p>5 Exhibit 15, the defendant's teamwork</p> <p>6 calendars are listed there too. So you</p> <p>7 have characterized them as motivational</p> <p>8 products as well, right?</p> <p>9 A. I just want to clarify, are you</p> <p>10 referring to the Windmill website or the</p> <p>11 Amsterdam?</p> <p>12 Q. No, let me be more clear with</p> <p>13 that.</p> <p>14 (Deposition Exhibit 17, Printout</p> <p>15 from Amsterdam website, marked for</p> <p>16 identification.)</p> <p>17 Can you identify Exhibit 17?</p> <p>18 A. I believe it is a page printed</p> <p>19 off of one version of our website.</p> <p>20 Q. And do you see the heading at the</p> <p>21 top underneath the, I guess the menu links,</p> <p>22 where it says motivational planners?</p> <p>23 A. Yes.</p> <p>24 Q. So that's a distinct product</p> <p>25 category, right?</p>	<p style="text-align: right;">Page 44</p> <p>1 Kirbey</p> <p>2 A. Concerns about existing products</p> <p>3 or patents and any concerns with Taylor's</p> <p>4 affiliated customers.</p> <p>5 Q. What do you mean by concern about</p> <p>6 Taylor's affiliated customers?</p> <p>7 A. Taylor has, as a whole, has many</p> <p>8 customers which we are not aware of, so we</p> <p>9 want to be careful that we're not going to</p> <p>10 market with any legal issues for one of our</p> <p>11 customers that Amsterdam or Holland would</p> <p>12 know nothing about.</p> <p>13 Q. And who conducts that review?</p> <p>14 A. Our legal department.</p> <p>15 Q. Somebody who works for Taylor?</p> <p>16 A. Yes.</p> <p>17 Q. And do you know whether any legal</p> <p>18 review is done of the teamwork product?</p> <p>19 A. I believe so.</p> <p>20 Q. Do you know whether that was</p> <p>21 memorialized in a written opinion?</p> <p>22 A. I don't know.</p> <p>23 (Deposition Exhibit 18, Defendant's</p> <p>24 Response to Request for Production of</p> <p>25 Documents, marked for identification.)</p>
<p style="text-align: right;">Page 43</p> <p>1 Kirbey</p> <p>2 A. Correct.</p> <p>3 Q. And scanning over the products,</p> <p>4 do you see the same products that are</p> <p>5 featured on page 16 of Exhibit 15?</p> <p>6 A. I believe so. I'm not sure. I</p> <p>7 don't believe all of them are there. I</p> <p>8 think there is one additional here that's</p> <p>9 not on, I believe the white sands calendar</p> <p>10 with clear is not listed here, but is in</p> <p>11 fact --</p> <p>12 Q. And then on the third page of</p> <p>13 Exhibit 17, do you see defendant's teamwork</p> <p>14 products?</p> <p>15 A. Yes.</p> <p>16 Q. Are the defendant's teamwork</p> <p>17 products categorized under any other</p> <p>18 sections on your website?</p> <p>19 A. I don't know.</p> <p>20 Q. Before you bring new designs to</p> <p>21 market, do you have any sort of legal</p> <p>22 review?</p> <p>23 A. In some cases.</p> <p>24 Q. And what would the criteria be</p> <p>25 for that?</p>	<p style="text-align: right;">Page 45</p> <p>1 Kirbey</p> <p>2 Q. Are you familiar with the</p> <p>3 document we've marked as Exhibit 18?</p> <p>4 A. No.</p> <p>5 Q. Let me read request number 4,</p> <p>6 which starts on page 3. First, this</p> <p>7 document is a document we served on your</p> <p>8 attorney asking him to produce relevant</p> <p>9 documents. Number 4 states, all documents</p> <p>10 which refer or relate to or comment on any</p> <p>11 search conducted for or on behalf of</p> <p>12 defendant with respect to any of the words</p> <p>13 or features of the trade dress of</p> <p>14 defendant's teamwork products. Response,</p> <p>15 defendant will produce documents responsive</p> <p>16 to this request.</p> <p>17 Mr. Kirbey, do you know whether</p> <p>18 you have produced any documents that are</p> <p>19 responsive to this request?</p> <p>20 A. I don't know if we have or not.</p> <p>21 MR. AIETA: Can I just clarify</p> <p>22 for the record, you've identified that</p> <p>23 as the request served on defendants.</p> <p>24 It's actually the response defendants</p> <p>25 served on plaintiff.</p>

12 (Pages 42 to 45)

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1 Kirbey
 2 MR. JACOBSON: Yes, I'm reading
 3 from the response. My mistake.
 4 Q. Does your company have a policy
 5 regarding the use of trademarks?
 6 A. Can you give me a little bit more
 7 clarification on what you believe policy
 8 is?
 9 Q. You had indicated before that
 10 when you come up with a new design,
 11 sometimes legal counsel from Taylor will
 12 review the design, and tell me if that will
 13 also involve any trademarks that may appear
 14 on the designs or on the product itself.
 15 MR. AIETA: Objection.
 16 A. If there was, or believed to be a
 17 trademark on it, then yes.
 18 Q. Then it would be searched?
 19 A. I believe so. I'm not as
 20 familiar with what their process is. We
 21 technically -- it's very loose as to how
 22 often we work with them, and they conduct
 23 all the search and whatever else they do.
 24 Q. But who makes the decision
 25 whether it needs to go up to Taylor's legal

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1 Kirbey
 2 Q. Do you have -- do you feel that
 3 you have an understanding of the
 4 fundamentals of the significance of having
 5 a trademark registration?
 6 MR. AIETA: Objection.
 7 A. Yeah, I don't know that I'm that
 8 versed in it. I rely on our internal legal
 9 counsel for that.
 10 Q. Did you know at the time you went
 11 to production with your teamwork calendar
 12 that Myron had a registered trademark for
 13 the words, together we achieve the
 14 extraordinary?
 15 A. No.
 16 Q. So do you recall, going back to
 17 the legal clearance, do you recall whether
 18 the teamwork review by legal counsel was
 19 just for the words or for the design or
 20 both?
 21 MR. AIETA: Objection.
 22 A. I don't recall.
 23 Q. And would the legal counsel
 24 provide you with a written report, would
 25 the legal counsel prepare a written

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1 Kirbey
 2 counsel?
 3 A. The product marketing manager,
 4 the designer. There is no formal policy
 5 for that.
 6 Q. If a calendar only had a graphic
 7 on it and no words, would that go up for
 8 legal review?
 9 A. It depends on where they got the
 10 graphic from, and if they thought they were
 11 okay to reproduce it, was there a concern
 12 on the license, was it something they just
 13 took off clipart or was it something they
 14 did themselves. So they would make that
 15 call.
 16 Q. And what if words appeared on the
 17 product?
 18 A. I would say in some cases, but
 19 not all.
 20 Q. Do you know whether Holland owns
 21 any trademark registrations?
 22 A. Yes, they do.
 23 Q. Do you know whether they own any
 24 trademark registrations for calendars?
 25 A. I don't know.

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1 Kirbey
 2 opinion?
 3 A. No.
 4 Q. Give me the name of the legal
 5 counsel again, please?
 6 A. They're internal. We have a few
 7 internal folks and they outsource when they
 8 need to, so I'm not sure who handled this.
 9 Emily Rudy at the main time would have been
 10 our contact. They use outside firms as
 11 well, so I couldn't tell you.
 12 Q. And so you don't -- okay.
 13 A. We would pick up the phone and
 14 call and they give us an answer.
 15 Q. They give you an answer on the
 16 phone?
 17 A. Pretty much.
 18 Q. Okay. Do you know whether any
 19 changes were made to the product as a
 20 result of the legal review?
 21 A. I am unaware.
 22 (Recess taken.)
 23 (Deposition Exhibit 19, Myron
 24 Calendar, marked for identification.)
 25 FURTHER EXAMINATION BY MR. JACOBSON:

13 (Pages 46 to 49)